Milwaukee R. & L. Co., 146 N. W. (Wis.) 1133. The principal case seems out of harmony with the weight of authority.

S. B.

EMINENT DOMAIN—VACATION OF ALLEY—COMPENSATION AS A CONDITION PRECEDENT—TAKING OF PRIVATE PROPERTY.—HUBBELL ET AL. V. CITY OF DES MOINES, 153 N. W. (IA.) 337.—*Held*, that where a coliseum, used for assembly purposes, abutted on an alley on which it had no exits, these being located on other streets, and the city vacated such alley, by an ordinance devoting the land to park purposes, payment by the city to the owner of the building of compensation for damages sustained by him by vacation of the alley was not a condition precedent to vacation, since such vacation of a street is not a "taking of private property" in contemplation of the constitution.

The general rule deducible from the authorities seems to be that any destruction, restriction, or interruption of the common necessary use and enjoyment of property constitutes a taking. *Hooker v. New Haven, etc., R. Co.*, 14 Conn. 146; *Brinton v. Comm.*, 178 Mass. 199. The benefits to be received by the person whose land is taken by the public for a road is a part of the consideration for release of the land, or its condemnation for a road. *Cochrane v. Comm.*, 175 Mass. 199. And when once vested in him, or he becomes entitled thereto, they become appurtenant to the land, and are as much his property as the land itself; and neither state nor person can deprive him of it except in the manner prescribed by the constitution. *Pearsall v. Eaton Co.*, 74 Mich. 558; *Gorgan, etc., v. Louisville & New Albany, etc., R. R.*, 89 Ky. 216; *Webster v. Lowell*, 142 Mass. 324; *contra, McGee's Appeal*, 11 Pa. St. 470; *Levee District No. 9 v. Farmer*, 101 Cal. 178; principal case.

C. Y. B.

EQUITABLE CONVERSION—DISPUTED LEGACY—SPECULATIVE PURCHASE BY EXECUTOR.—COYNE V. DAVIS, 154 N. W. (NEB.) 547.—*Held*, that land devised in trust, to be sold to satisfy certain legacies, is personalty in equity, to the exclusion of the heir-at-law, even after the executrix has purchased for a nominal sum the valid, but then doubtful, claim of a legatee thereto. Morrissy, C. J., and Sedgwick and Fawcett, JJ., *dissenting*.

The doctrine of equitable conversion applies only to effectuate the testamentary intention. *In re Rudy*, 185 Pa. St. 359. If the trustee to sell acquires but the bequest fails, the trust results to the heir-at-law. *Matter of Wagner*, 74 Hun. (N. Y.) 352. Similar in effect is the discharge or release of a legatee's claim, as this enures to the benefit of the estate. See *Hale v. Aaron*, 77 N. C. 371. When an executor buys in the claim of a creditor, this is presumed to be a payment and not a purchase. *Gillett v. Gillett*, 9 Wis. 194. In case of a legacy purchased by the executor in his individual capacity, it is held that only the vendor can attack the executor's interest. *Peyton v. Enor*, 16 La. Ab. 135; *Hale v. Aaron, supra*; *Barton v. Hassard*, 3 Drury & Warren's C. L. Cases 461. This doctrine, if sound, extends

only to a clear case of a purchase by the executor individually. In so equivocal a transaction as that of the principal case, the heirs should at least have been allowed the usual presumption in favor of a discharge and not a purchase.

C. R. W.

INJUNCTION—SUNDAY PICTURE SHOW—ENFORCEMENT OF INVALID ORDINANCE—ADEQUACY OF LEGAL REMEDY.—KLINGER V. RYAN, 153 N. Y. S. 937.—*Held,* injunction will not issue enjoining the chief of police of a city from arresting the proprietor of a picture show under an invalid ordinance forbidding Sunday exhibitions, inasmuch as the proprietor has a remedy at law.

The issuance of an injunction depends primarily on the adequacy of a remedy at law, for when the latter exists equity will not interfere, *Klinesmith v. Harrison,* 18 Ill. App. 467; *Willis v. Staples,* 30 Hun. (N. Y.) 644. Equity, however, will act where irreparable damage will be done to plaintiff's business. *Hale v. Burns,* 91 N. Y. S. 929; *Dobbens v. Los Angeles,* 195 U. S. 223. Accordingly a municipality and its officials will be enjoined from acting under a void ordinance where property rights will be injured and damages will not compensate. *Morris Canal Co. v. Jersey City,* 12 N. J. Eq. 252. It is well settled that police officers will not be enjoined from performing their duties in excess of general police power, even though done in an oppressive manner. *Sterman v. Kennedy,* 15 Abb. Pr. (N. Y.) 201; *Olympia Ath. Club v. Speer,* 29 Colo. 158. Nor even to the injury of the plaintiff's business by warning the public of its character, if done in good faith. *Gilbert v. Mickli,* 4 Sanford Chan. (N. Y.) 357. It is for the public good that the police officers be allowed to act without restraint in the performance of their duties, as what might be a trespass on one occasion would be lawful on another. *Pon v. Wiltman,* 147 Cal. 280; *Delaney v. Flood,* 183 N. Y. 323. If the principal case involved only the prevention of an arrest there is no doubt that the court acted correctly in refusing to issue an injunction. *Burns v. McAdoo,* 99 N. Y. S. 51. On the other hand, if damages for injury to his business were caused by the closing of the Sunday picture shows under the invalid ordinance, the proprietor had an adequate remedy at law against the officer acting under the ordinance, as he would be liable personally. *Campbell v. Sherman,* 35 Wis. 103. It is evident that the damages might have been ascertained and recovered. *Allison v. Chandler,* 11 Mich. 542. On whatever ground the injunction might have been prayed for, the court acted correctly in refusing to issue the same.

J. McD.

LIBEL—PUBLICATION—WHEN MAILED COMMUNICATION IS PUBLISHED.—HUTH V. HUTH, 3 K. B. 32, 84 L. J. K. B. 1307.—*Held,* the fact that a written communication is sent through the mail in an unclosed envelope is not of itself evidence of publication, although in fact the contents were taken out and read by a servant in breach of duty.

The recognized general rule as laid down in *Roberts v. English Mfg. Co.,* 46 So. (Ala.) 752, is that sending through the mail is not evidence of publication unless the sender knew that a third party would read the